IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CRIMINAL APPLICATION No 940 of 1998

with

SPECIAL CRIMINAL APPLICATION No 941 of 1998

and

SPECIAL CRIMINAL APPLICATION No 946 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

N R DESAI

Versus

Y N PAREKH

Appearance: (In all three matters)

TANNA ASSOCIATES for Petitioner

MR MAYUR S BAROT for Respondent No. 1

DELETED for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/03/2001

C.A.V. JUDGEMENT

#. In all these three matters, not only the parties are common but identical order is passed by the learned Metropolitan Magistrate, Court No.2, Ahmedabad and therein the facts and questions of law raised are common. In fact, three separate complaints have been filed by the Insurance Inspector, E.S.I. Corporation, Ahmedabad and that is how three separate petitions are there. In view of these facts, these matters are taken up for hearing together and are being decided by this common order. The facts of the case and the grounds of challenge to the order are being taken up from special criminal application No.940/98.

#. By way of this petition, under Article 226 of the Constitution of India read with sections 397 and 482 of Code of Criminal Procedure, 1973, the petitioner challenges the legality, validity and propriety of the order passed below Ex.2 in Criminal Case No.2611/95 by the learned Metropolitan Magistrate, Court No.2, Ahmedabad dated 9-7-1998. Further prayer has been made by the petitioner for quashing and setting aside of the criminal complaint No.2611/95 filed by the respondent No.1, as what it is stated, it amounts to abuse of the process of the Court and same does not disclose any offence whatsoever against the petitioner. The respondent No.2, is a registered company and respondent No.3, is the Director thereof.

#. The facts of the case, as per the petition, are that the respondent No.2 is a registered company and the respondent No.3 is its Director. The respondents No.2 and 3 applied for loan from Gujarat Industrial Investment Corporation on the basis of their project report. When GIIC enters into a loan agreement with the loanee company, there is a special covenant in the same whereby "nominee" of the GIIC Ltd. is appointed as Nominee Director for the purpose of supervising financial working of such a company with the purpose of protecting financial interest of GIIC Ltd. It is stated that such a Nominee Director is not the Principal employer as envisaged under the provisoins of the Employees' State Insurance ACt, 1949 as well as Regulations made thereunder. It is stated that the petitioner is in no way responsible for day to day administration and working of the respondent No.1 company. The petitioner submits that because of some fault of the respondents No.2 and 3 and as they have committed alleged breach of provisions of the Act

aforesaid as well as the Regulations, whereby it is alleged that the respondent No.2 did not file any return in quadruplicate as provided under Regulation 26 of the Employees' State Insurance (General) Regulation, 1950, the respondent No.1, Insurance Inspector, filed a criminal case being Criminal Case No.2611/95 in the Court of learned Metropolitan Magistrate, Court No.2, Ahmedabad against the petitioner company and other Director. The cognizance in the complaint has been taken and summons were issued to the petitioner. After receipt of summons, the petitioner appeared in the Court and filed an application for dropping the proceeding against him. That application came to be rejected by the Metropolitan Magistrate, Court No.2, Ahmedabad under the order dated 9-7-1998. Hence, this petition.

#. Learned counsel for the petitioner raised manifold contentions challenging the legality, propriety and validity of the order of Metropolitan Magistrate, Court No.2, Ahmedabad and also placed reliance on the provisions of the Act, Regulations as well as certain authorities but as this petition is not maintainable on the ground of availability of alternative remedy, I do not consider it to be appropriate to refer, discuss and give findings on all those contentions.

#. In para-2 of the petition, the petitioner stated that by way of this petition under Article 226 of the Constitution read with sections 397 and 482 of Code of Criminal Procedure, 1973, the petitioner challenges legality, validity and propriety of the order passed below Ex.2 in Criminal Case No.2611/95 by the learned Metropolitan Magistrate, Court No.2, Ahmedabad dated 9-7-1998.

#. I fail to see how far it is correct on the part of the petitioner to state it to be a petition under Article 226 of the Constitution of India read with sections 397 and 482 of the Code of Criminal Procedure, 1973. Article 226 of the Constitution is a provision which relates to extraordinary jurisdiction of this Court and it is constitutional remedy available to the citizens of the country and it cannot be said to be the only available read with some provisions of the Criminal Procedure Code. Sections 397 of Cr.P.C. relates to revisional powers of the High Court and Sessions Court and section 482 Cr.P.C. relates to inherent powers of the High Court. These two provisions have been put in service by the petitioner probably in case where the Court reaches to the conclusion that this petition is not maintainable, conveniently, the petitioner may press

these two provisions of Cr.P.C.. That does not seem to be correct approach of the petitioner. Sections 397 and 482 of Cr.P.C. acts in two different fields. It is no more res integra that section 482 of Cr.P.C. is available to the litigant only in case he has no other remedy. Section 397 of Cr.P.C. gives revisional powers to High Court and Sessions Court and when this revisional power is available in the case then section 482 of Cr.P.C. may not have any applicability.

#. What for these two provisions have been mentioned now needs to be further gone into. For this, reference has to be made to the prayer clause of the petition. It consists of two parts i.e. quashing and setting aside the complaint, annexure `A' and second quashing and setting aside the order of the learned Metropolitan Magistrate Court No.2, dated 9-7-1998. Possibly the petitioner is fully known of the fact that that the order dated 9-7-98 is not an interlocutory order and it is revisable and that is the reason that this section 397 of Cr.P.C. would have been mentioned. So far as quashing of complaint is concerned, that is only available under section 482 of Cr.P.C. and that is how this provision has been mentioned. Be that as it may. Otherwise also, mentioning of these three provisions by the petitioner appears to be an attempt on his part to confuse the issue. If ultimately complaint is quashed and set aside by this Court, then the order of the learned Metropolitan Magistrate, Court No.2, dated 9-7-98 will automatically go but the petitioner has put all the provisions in service.

#. The application filed by the petitioner Ex.2 is very clear and specific. The petitioner raised preliminary objection re. maintainability of criminal complaint against him and prayed for dropping of the proceeding against him. If this prayer is allowed, then naturally there is no question of praying for quashing of the complaint. The complaint is not only against the petitioner but there are other persons also and they have not joined the petitioner in making prayer for quashing of the compliant. In view of this fact, this prayer made for quashing of the complaint in this petition is wholly misconceived and misplaced. In such case, there cannot be any prayer for quashing of the complaint but at the most the prayer for dropping of the proceeding, to be more precise, discharge of the petitioner from the criminal case. For this, the petitioner filed an application and that has been rejected. This order of the learned Metropolitan Magistrate is not an interlocutory order and in case

ultimately the prayer as made by the petitioner therein is accepted then so far as the complaint relates to him will finally stand decided. These petitions are not maintainable as the petitioner has efficacious alternative remedy available against the order of the Metropolitan Magistrate, Court No.2, Ahmedabad.

#. The prayer for quashing of the complaint is made by the petitioner only to get the jurisdiction of this Court. In such matters, as stated earlier and to be stated at the cost of repetition, only appropriate legal prayer is dropping of the proceedings and not for quashing and that what precisely has been done by the petitioner also. In case the petitioner really intended to get criminal complaint quashed then what for this application is filed for dropping. When this application is rejected, this prayer is made by the petitioner, which cannot be said to be an honest approach of the petitioner. Under section 397 of Cr.P.C., there is a concurrent jurisdiction of this Court and the Sessions court but in such matters first the litigant has to approach to the Sessions Court. The petitioner has not given out any reason whatsoever why he has directly approached to this court in the matter. In para-14 of the petition, the petitioner has given out that he has no other alternative efficacious remedy except to approach this Hon'ble Court under Article 226 of the Constitution of India. If that is correct then mentioning of these two provisions i.e. 397 and 482 of Cr.P.C. is certainly wholly unwarranted and unjustified.

##. As in the matter, the petitioner has efficacious alternative remedy available to file a revision application before the Sessions Court, only on this ground, these petitions fail and the same are dismissed. Rule discharged. In the facts of this case, no order as to costs.

##. If we go by the date and order of filing of the petitions, it appears that the same would have been filed in this Court within limitation period prescribed under the Limitation Act, 1963 for filing of the criminal revision before the Sessions Court. In case within a period of seven days from the date of receipt of certified copy of this order, the petitioner prefers revision application in these three matters in the Court of Sessions Judge, Ahmedabad, the said Court is directed to decide the same on merits and not to dismiss the revision applications only on the ground as barred by limitation.

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zgs/-